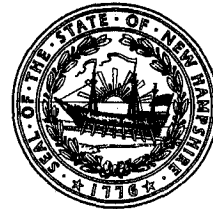




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Town of Alexandria
45 Washburn Road
Alexandria, NH 03222

Re: Brook Road, Tax Map 407
Lots 45, 46, 97, 98, 100
Wetlands Bureau File #2004-2190

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 06-003**

January 5, 2006

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to the Town of Alexandria, pursuant to RSA 482-A and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling \$2,500 be imposed against the Town of Alexandria for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. The Town of Alexandria (the "Town") is a duly constituted municipality of the state of New Hampshire having a mailing address of 45 Washburn Road, Alexandria, NH 03222.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted New Hampshire Administrative Rule Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation of violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted New Hampshire Administrative Rule Env-C 614 to establish the schedule of fines for such violations.
3. The Town of Alexandria maintains Brook Road, located in part on Tax Map 407, Lots 45, 46, 97, 98, and 100.
4. On September 9, 2004, the Division received a Standard Dredge and Fill Application ("Rip-

Rap Application") from the Town. The Application sought to, among other things, place 247 linear feet of rip-rap within the bank of Brock Brook in three separate locations ("Sites 1, 2, and 3") along Brook Road.

5. On September 9, 2004, the Division received a second Standard Dredge and Fill Application ("Bridge Application") from the Town proposing to replace an existing bridge over Brook Road, located several hundred feet downstream of the Rip-Rap Application.

6. On October 13, 2004, Division personnel conducted a field inspection and concluded that using rip-rap at Sites 1 and 3 did not meet the least-impacting alternative requirements of NH Admin. Rule Wt 404.04.

7. On November 2, 2004, the Division approved the Bridge Application and issued Wetlands and Non-Site Specific Permit 2004-2192 to the Town to "Dredge and fill a total of 2597 square feet within the bed and banks of Brock Brook for replacement of the existing red-listed bridge."

8. On November 24, 2004, the Division issued a Request for More Information ("RFI") for the Rip-Rap Application. The RFI requested, among other things, plans for Sites 2 and 3. The RFI also stated that rip-rap did not appear to be the least impacting alternative and requested an explanation as to why a vegetative buffer would not be a practical alternative.

9. On March 7, 2005, the Division issued a follow-up letter to the RFI. The letter stated that DES would deny the Rip-Rap Application unless a response was received by April 5, 2005.

10. On April 5, 2005, the Division received a response to the November 2004 RFI, from the Town.

11. On May 2, 2005, the Division issued a second RFI. The second RFI requested, among other things, a cross-sectional plan for site 2 and an explanation as to why vegetative stabilization could not be used for site 1 and the road widened on the non-stream side of site 2.

12. On June 8, 2005, William Bucklin, the Road Agent for the Town of Alexandria, called the Division to state that the Town had completed the rip-rap work for two of the three sites. The work was done because he thought that the Town had received the wetlands permit to do this work.

13. On October 6, 2005, Division personnel conducted a field inspection and observed or learned the following:

- a. Approximately 130 linear feet of stone rip-rap had been placed within the bank of Brock Brook at site "1;"
- b. No work had been done at site "2;"
- c. Approximately 75 linear feet of stone rip-rap had been placed within the bank of Brock Brook at site "3;"
- d. The bridge had been replaced over Brock Brook; and

e. Mr. Bucklin was present during the field inspection. He stated that he did the work himself. He relied on a telephone call from someone from the Town stating that they "had gotten the permit." Mr. Bucklin stated that he did not see the permit document prior to beginning work, and thought the Town received authorization to place the rip-rap when the Town received the permit to construct the bridge.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINE

1. The Town has violated RSA 482-A:3, I, by placing approximately 130 feet of rip-rap within the bank of a perennial stream without a permit from DES. For this violation, Env-C 614.04 (c) authorizes a fine of \$1,500.
2. The Town has violated RSA 482-A:3, I, by placing approximately 75 feet of rip-rap within the bank of a perennial stream without a permit from DES. For this violation, Env-C 614.03(c) authorizes a fine of \$1,000.

The total amount of the proposed fine is \$2,500.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, the Town of Alexandria is required to respond to this notice. Please respond no later than February 20, 2006 using the enclosed colored form.

1. If the Town would like to have a hearing, please have an official sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If the Town wishes to discuss the possibility of settling the case, please have an official sign the appearance, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If the Town chooses to waive the hearing and pay the proposed fine, please have an official sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

The Town is not required to be represented by an attorney. If the Town chooses to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that the Town committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that the Town committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that the Town proves, by a preponderance of the evidence, applies in this case:**

1. The violation was a one-time or non-continuing violation, **and** that the Town did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** that the Town did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, the Town was making a good faith effort to comply with the requirement that was violated.
3. The Town has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to the Town's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that the Town committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is the Town's opportunity to present testimony and evidence that the Town did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If the Town has any evidence, such as photographs, business records or other documents, that the Town believes show that the Town did not commit the violation(s) or that otherwise support the Town's position, the Town should bring the evidence to the hearing. The Town may also bring witnesses (other people) to the hearing to testify on the Town's behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.nh.gov). If the Town has any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.

COPY

Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Linda Magoon, DES Wetlands Bureau
cc: Town of Alexandria Conservation Commission

***** RETURN THIS PAGE ONLY *****

**THE TOWN OF ALEXANDRIA IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN February 20, 2006

Please check the appropriate line and fill in the requested information below:

APPEARANCE On behalf of the Town of Alexandria:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of the Town of Alexandria:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$2,500 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature Date

Name (please print or type): _____

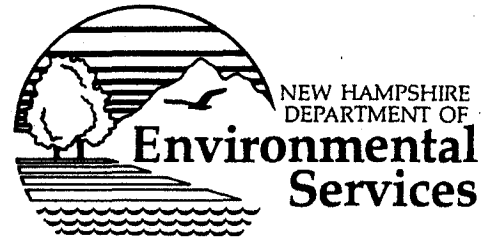
Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

**DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095**

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-2

2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.